

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 30

FINAL READING

Introduced by Pahls, 31.

Read first time January 8, 2009

Committee: Banking, Commerce and Insurance

A BILL

1 FOR AN ACT relating to the Nebraska Real Estate License Act;

2 to amend sections 81-885.02, 81-885.05, 81-885.09,

3 81-885.10, 81-885.15, 81-885.24, 81-885.25, 81-885.29,

4 81-885.43, 81-885.44, 81-885.46, 81-885.48, and

5 81-887.03, Reissue Revised Statutes of Nebraska; to

6 change provisions relating to the act and the powers

7 of the State Real Estate Commission as prescribed; to

8 provide for civil penalties; to provide powers and duties

9 for the Attorney General; to harmonize provisions; to

10 repeal the original sections; and to outright repeal

11 section 81-885.47, Reissue Revised Statutes of Nebraska.

12 Be it enacted by the people of the State of Nebraska,

1           Section 1. Sections 81-885.01 to 81-885.55 and sections 1  
2 and 10 of this act shall be known and may be cited as the Nebraska  
3 Real Estate License Act.

4           Sec. 2. Section 81-885.02, Reissue Revised Statutes of  
5 Nebraska, is amended to read:

6           81-885.02 After September 2, 1973, it shall be unlawful  
7 for any person, directly or indirectly, to engage in or conduct,  
8 or to advertise or hold himself or herself out as engaging in  
9 or conducting the business, or acting in the capacity, of a real  
10 estate broker, associate broker, or real estate salesperson within  
11 this state without first obtaining a license as such broker,  
12 associate broker, or salesperson, as provided in ~~sections 81-885.01~~  
13 ~~to 81-885.48,~~ the Nebraska Real Estate License Act, unless he or  
14 she is exempted from obtaining a license under section 81-885.04.

15           Sec. 3. Section 81-885.05, Reissue Revised Statutes of  
16 Nebraska, is amended to read:

17           81-885.05 ~~Sections 81-885.01 to 81-885.48~~ The Nebraska  
18 Real Estate License Act shall not apply to railroads and other  
19 public utilities regulated by the State of Nebraska, or their  
20 subsidiaries or affiliated corporations, or to the officers or  
21 regular employees thereof, unless performance of any of the acts  
22 described in subdivision (2) of section 81-885.01 is in connection  
23 with the sale, purchase, lease, or other disposition of real  
24 estate or investment therein unrelated to the principal business  
25 activity of such railroad or other public utility or affiliated or

1 subsidiary corporation thereof.

2           Sec. 4. Section 81-885.09, Reissue Revised Statutes of  
3 Nebraska, is amended to read:

4           81-885.09 The Attorney General shall render to the State  
5 Real Estate Commission opinions on all questions of law relating to  
6 the interpretation of ~~sections 81-885.01 to 81-885.48~~ the Nebraska  
7 Real Estate License Act or arising in the administration thereof,  
8 and shall act as attorney for the commission in all actions and  
9 proceedings brought by or against it under or pursuant to ~~any of~~  
10 ~~the provisions of sections 81-885.01 to 81-885.48.~~ the act. All  
11 fees and expenses of the Attorney General arising out of such  
12 duties shall be paid out of the State Real Estate Commission's  
13 Fund.

14           Sec. 5. Section 81-885.10, Reissue Revised Statutes of  
15 Nebraska, is amended to read:

16           81-885.10 The commission shall have the full power to  
17 regulate the issuance of licenses and the activities of licensees  
18 and to revoke or suspend licenses issued under the ~~provisions~~  
19 ~~of sections 81-885.01 to 81-885.48,~~ Nebraska Real Estate License  
20 Act, to censure licensees, and to enter into consent decrees. The  
21 commission may, alone or in combination with such disciplinary  
22 actions, impose a civil fine on a licensee for each violation  
23 alleged in a complaint for which the commission has made a finding  
24 of guilt, except that the total fine for such violations shall not  
25 exceed two thousand five hundred dollars per complaint.

1           Sec. 6. Section 81-885.15, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           81-885.15 All fees collected under ~~sections 81-885.01 to~~  
4 ~~81-885.48~~ the Nebraska Real Estate License Act shall be deposited  
5 in the state treasury in a fund to be known as the State Real  
6 Estate Commission's Fund. The commission may use such part of  
7 the money in this fund as is necessary to be used by it in the  
8 administration and enforcement of ~~sections 81-885.01 to 81-885.48.~~  
9 the act. The fund shall be paid out only upon proper vouchers and  
10 upon warrants issued by the Director of Administrative Services  
11 and countersigned by the State Treasurer, as provided by law. The  
12 expenses of conducting the office must always be kept within the  
13 income collected and deposited with the State Treasurer by such  
14 commission and such office, and the expense thereof shall not be  
15 supported or paid from any other state fund. Any money in the State  
16 Real Estate Commission's Fund available for investment shall be  
17 invested by the state investment officer pursuant to the Nebraska  
18 Capital Expansion Act and the Nebraska State Funds Investment Act.

19           Sec. 7. Section 81-885.24, Reissue Revised Statutes of  
20 Nebraska, is amended to read:

21           81-885.24 The commission may, upon its own motion,  
22 and shall, upon the sworn complaint in writing of any person,  
23 investigate the actions of any broker, associate broker,  
24 salesperson, or subdivider, ~~and~~ may censure the licensee or  
25 certificate holder, revoke or suspend any license or certificate

1 issued under the Nebraska Real Estate License Act, or enter into  
2 consent orders, and, alone or in combination with such disciplinary  
3 actions, may impose a civil fine on a licensee pursuant to section  
4 81-885.10, whenever the license or certificate has been obtained by  
5 false or fraudulent representation or the licensee or certificate  
6 holder has been found guilty of any of the following unfair trade  
7 practices:

8 (1) Refusing because of religion, race, color, national  
9 origin, ethnic group, sex, familial status, or disability to show,  
10 sell, or rent any real estate for sale or rent to prospective  
11 purchasers or renters;

12 (2) Intentionally using advertising which is misleading  
13 or inaccurate in any material particular or in any way  
14 misrepresents any property, terms, values, policies, or services  
15 of the business conducted;

16 (3) Failing to account for and remit any money coming  
17 into his or her possession belonging to others;

18 (4) Commingling the money or other property of his or her  
19 principals with his or her own;

20 (5) Failing to maintain and deposit in a separate  
21 non-interest-bearing checking account all money received by a  
22 broker acting in such capacity, or as escrow agent or the temporary  
23 custodian of the funds of others, in a real estate transaction  
24 unless all parties having an interest in the funds have agreed  
25 otherwise in writing;

1           (6) Accepting, giving, or charging any form of  
2 undisclosed compensation, consideration, rebate, or direct profit  
3 on expenditures made for a principal;

4           (7) Representing or attempting to represent a real estate  
5 broker, other than the employer, without the express knowledge and  
6 consent of the employer;

7           (8) Accepting any form of compensation or consideration  
8 by an associate broker or salesperson from anyone other than his or  
9 her employing broker without the consent of his or her employing  
10 broker;

11           (9) Acting in the dual capacity of agent and undisclosed  
12 principal in any transaction;

13           (10) Guaranteeing or authorizing any person to guarantee  
14 future profits which may result from the resale of real property;

15           (11) Placing a sign on any property offering it for sale  
16 or rent without the written consent of the owner or his or her  
17 authorized agent;

18           (12) Offering real estate for sale or lease without the  
19 knowledge and consent of the owner or his or her authorized agent  
20 or on terms other than those authorized by the owner or his or her  
21 authorized agent;

22           (13) Inducing any party to a contract of sale or lease  
23 to break such contract for the purpose of substituting, in lieu  
24 thereof, a new contract with another principal;

25           (14) Negotiating a sale, exchange, listing, or lease of

1 real estate directly with an owner or lessor if he or she knows  
2 that such owner has a written outstanding listing contract in  
3 connection with such property granting an exclusive agency or an  
4 exclusive right to sell to another broker or negotiating directly  
5 with an owner to withdraw from or break such a listing contract  
6 for the purpose of substituting, in lieu thereof, a new listing  
7 contract;

8 (15) Discussing or soliciting a discussion of, with an  
9 owner of a property which is exclusively listed with another  
10 broker, the terms upon which the broker would accept a future  
11 listing upon the expiration of the present listing unless the owner  
12 initiates the discussion;

13 (16) Violating any provision of sections 76-2401 to  
14 76-2430;

15 (17) Soliciting, selling, or offering for sale real  
16 estate by offering free lots or conducting lotteries for the  
17 purpose of influencing a purchaser or prospective purchaser of real  
18 estate;

19 (18) Providing any form of compensation or consideration  
20 to any person for performing the services of a broker, associate  
21 broker, or salesperson who has not first secured his or her license  
22 under the Nebraska Real Estate License Act unless such person is  
23 (a) a nonresident who is licensed in his or her resident regulatory  
24 jurisdiction or (b) a citizen and resident of a foreign country  
25 which does not license persons conducting the activities of a

1 broker and such person provides reasonable written evidence to  
2 the Nebraska broker that he or she is a resident citizen of that  
3 foreign country, is not a resident of this country, and conducts  
4 the activities of a broker in that foreign country;

5 (19) Failing to include a fixed date of expiration in  
6 any written listing agreement and failing to leave a copy of the  
7 agreement with the principal;

8 (20) Failing to deliver within a reasonable time a  
9 completed and dated copy of any purchase agreement or offer to buy  
10 or sell real estate to the purchaser and to the seller;

11 (21) Failing by a broker to deliver to the seller in  
12 every real estate transaction, at the time the transaction is  
13 consummated, a complete, detailed closing statement showing all  
14 of the receipts and disbursements handled by such broker for  
15 the seller, failing to deliver to the buyer a complete statement  
16 showing all money received in the transaction from such buyer and  
17 how and for what the same was disbursed, and failing to retain true  
18 copies of such statements in his or her files;

19 (22) Making any substantial misrepresentations;

20 (23) Acting for more than one party in a transaction  
21 without the knowledge of all parties for whom he or she acts;

22 (24) Failing by an associate broker or salesperson to  
23 place, as soon after receipt as practicable, in the custody of his  
24 or her employing broker any deposit money or other money or funds  
25 entrusted to him or her by any person dealing with him or her as

1 the representative of his or her licensed broker;

2 (25) Filing a listing contract or any document or  
3 instrument purporting to create a lien based on a listing contract  
4 for the purpose of casting a cloud upon the title to real estate  
5 when no valid claim under the listing contract exists;

6 (26) Violating any rule or regulation adopted and  
7 promulgated by the commission in the interest of the public and  
8 consistent with the Nebraska Real Estate License Act;

9 (27) Failing by a subdivider, after the original  
10 certificate has been issued, to comply with all of the requirements  
11 of the Nebraska Real Estate License Act;

12 (28) ~~The broker or salesperson has been convicted~~  
13 Conviction of a felony or ~~entered~~ entering a plea of guilty or nolo  
14 contendere to a felony charge by a broker or salesperson;

15 (29) Demonstrating negligence, incompetency, or  
16 unworthiness to act as a broker, associate broker, or salesperson,  
17 whether of the same or of a different character as otherwise  
18 specified in this section; or

19 (30) Inducing or attempting to induce a person to  
20 transfer an interest in real property, whether or not for monetary  
21 gain, or discouraging another person from purchasing real property,  
22 by representing that (a) a change has occurred or will or may occur  
23 in the composition with respect to religion, race, color, national  
24 origin, ethnic group, sex, familial status, or disability of the  
25 owners or occupants in the block, neighborhood, or area or (b) such

1 change will or may result in the lowering of property values, an  
2 increase in criminal or antisocial behavior, or a decline in the  
3 quality of schools in the block, neighborhood, or area.

4 Sec. 8. Section 81-885.25, Reissue Revised Statutes of  
5 Nebraska, is amended to read:

6 81-885.25 (1) Before the commission censures a licensee,  
7 imposes a civil fine, or before revoking or suspending revokes or  
8 suspends a license, the commission shall send to the licensee a  
9 copy of the complaint by certified mail which contains the charges  
10 against the licensee and, unless the licensee waives the right to  
11 a hearing and has executed a consent order, give the licensee a  
12 hearing on the matter.

13 (2) The license holder shall have full authority to be  
14 heard in person or by counsel before the commission in reference  
15 to such charges. The commission shall, at least twenty days prior  
16 to the date set for hearing, notify the licensee in writing of  
17 the date and place of the hearing. Such notice may be served by  
18 delivering it personally to the license holder or by sending it  
19 by either registered or certified mail to the last-known business  
20 address of such license holder. If the license holder is an  
21 associate broker or a salesperson, the commission shall also notify  
22 the broker employing the license holder by mailing a copy of such  
23 notice to the broker's last-known business address.

24 Sec. 9. Section 81-885.29, Reissue Revised Statutes of  
25 Nebraska, is amended to read:

1           81-885.29 After the hearing the commission shall state in  
2 writing, officially signed by the chairperson and attested to by  
3 the director, its findings and determination and its order in the  
4 matter. If the commission determines that the license holder has  
5 been guilty of any violation of the Nebraska Real Estate License  
6 Act or the rules and regulations of the commission, ~~his or her~~  
7 ~~license shall be revoked or suspended forthwith or~~ the commission  
8 may revoke or suspend the license, enter an order censuring  
9 the license holder, or impose a civil fine pursuant to section  
10 81-885.10. The execution of a penalty of suspension may be stayed  
11 by the commission and the licensee may be placed on probation for  
12 the suspension period, after satisfactory completion of which his  
13 or her license shall be fully reinstated. Any violation of the  
14 act or the rules and regulations by the licensee during the period  
15 of probation shall cause the immediate execution of the suspension  
16 penalty.

17           Sec. 10. (1) All civil fines collected pursuant to the  
18 Nebraska Real Estate License Act shall be remitted to the State  
19 Treasurer for distribution in accordance with Article VII, section  
20 5, of the Constitution of Nebraska.

21           (2) Any civil fine imposed pursuant to the act which  
22 remains unpaid for more than sixty days shall constitute a debt  
23 to the State of Nebraska which may be recovered by the Attorney  
24 General, along with reasonable attorney's fees and court costs, in  
25 a proper form of action in the name of the state in the district

1 court of the county in which the violator resides. The commission  
 2 shall consider such debt to be grounds for denial, refusal to  
 3 renew, or refusal to reinstate a license under the act or grounds  
 4 for additional disciplinary action by the commission.

5           Sec. 11. Section 81-885.43, Reissue Revised Statutes of  
 6 Nebraska, is amended to read:

7           81-885.43 ~~Whenever,~~ Except as provided in subsection  
 8 (2) of section 10 of this act, whenever, in the judgment of  
 9 the commission, any person has engaged or is about to engage  
 10 in any acts or practices which constitute or will constitute a  
 11 violation of ~~sections 81-885.01 to 81-885.48,~~ the Nebraska Real  
 12 Estate License Act, the Attorney General may maintain an action  
 13 in the name of the State of Nebraska, in the district court of  
 14 the county ~~wherein~~ in which such violation or threatened violation  
 15 occurred, to abate and temporarily and permanently enjoin such acts  
 16 and practices and to enforce compliance with ~~sections 81-885.01 to~~  
 17 ~~81-885.48.~~ the act. The plaintiff shall not be required to give any  
 18 bond nor shall any court costs be adjudged against the plaintiff.

19           Sec. 12. Section 81-885.44, Reissue Revised Statutes of  
 20 Nebraska, is amended to read:

21           81-885.44 The commission by and through its director  
 22 may prefer a complaint for violation of ~~sections 81-885.01 to~~  
 23 ~~81-885.48.~~ the Nebraska Real Estate License Act.

24           Sec. 13. Section 81-885.46, Reissue Revised Statutes of  
 25 Nebraska, is amended to read:

1           81-885.46 Any real estate license or subdivision  
 2 certificate issued prior to September 2, 1973, shall, for purposes  
 3 of renewal, be considered to have been originally issued under the  
 4 ~~provisions of sections 81-885.01 to 81-885.48.~~ Nebraska Real Estate  
 5 License Act.

6           Sec. 14. Section 81-885.48, Reissue Revised Statutes of  
 7 Nebraska, is amended to read:

8           81-885.48 ~~The~~ Except for purposes of section 81-885.04,  
 9 the terms employ, employed, employer, or employee as used in  
 10 ~~sections 81-885.01 to 81-885.03 and 81-885.05 to 81-885.47,~~  
 11 the Nebraska Real Estate License Act shall not necessarily be  
 12 construed to imply an employer and employee relationship. The  
 13 use of such terms shall not prohibit the establishment of any  
 14 independent contract or other relationship between a business  
 15 and an individual, between individuals, or between businesses,  
 16 including an employer and employee relationship.

17           Sec. 15. Section 81-887.03, Reissue Revised Statutes of  
 18 Nebraska, is amended to read:

19           81-887.03 Nothing contained in sections 81-887.01 to  
 20 81-887.03 shall be construed to permit any person to conduct a sale  
 21 of real estate without first complying with the requirements of  
 22 ~~sections 81-867 to 81-887.~~ the Nebraska Real Estate License Act.

23           Sec. 16. Original sections 81-885.02, 81-885.05,  
 24 81-885.09, 81-885.10, 81-885.15, 81-885.24, 81-885.25, 81-885.29,  
 25 81-885.43, 81-885.44, 81-885.46, 81-885.48, and 81-887.03, Reissue

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1 Revised Statutes of Nebraska, are repealed.

2           Sec. 17. The following section is outright repealed:

3 Section 81-885.47, Reissue Revised Statutes of Nebraska.